

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Special Permit #1961

DATE: March 20, 2002

PROPOSAL: Chris Hansen is requesting a special permit to allow the temporary storage of construction equipment.

LAND AREA: A defined special permit area of 2.00 acres within a 20.30 acre lot.

CONCLUSION: The proposal generally reflects a full service business (including retail sales and product fabrication and finishing) and does not comply with the provisions of 27.63.590 for temporary storage of construction equipment and materials.

<u>RECOMMENDATION:</u>

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: A 2 acre portion of Lots 32 and 33 I.T., located in the NW 1/4 of Section 27, T9N, R7E, Lancaster County, Nebraska, further described in the attached legal description.

LOCATION: 7301 Yankee Hill Road.

APPLICANT: Chris Hansen
4150 South 20th Street
Lincoln, NE 68502
(402) 423-5253

OWNER: Christopher K. Hansen and
Union Bank and Trust as trustee of Deeds of Trust

EXISTING ZONING: AG Agriculture

EXISTING LAND USE: Custom Fence Company, an old farmstead and vehicle storage.

SURROUNDING LAND USE AND ZONING:

North: AGR single family acreage dwellings
South: AG Agricultural land
East: AG acreage family dwellings
West: AG and AGR, acreage dwellings

HISTORY: In **1979**, the site was rezoned from AA to AG.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan identifies this parcel as Agriculture. The Comprehensive Plan identifies three goals for Agricultural lands:

- Identify, evaluate and prioritize agriculturally productive land for continued agricultural production.
- Preserve highly productive agricultural land for agrarian purposes, as well as allow rural, non-agricultural residences; protect ecological and historic sites in rural Lancaster County.
- Plan and coordinate the development and provision of quality transportation, public-safety, education services, health and human services, water (including quantity), and waste management for the entire rural area.

The Land Use Planning and the Community Vision section of the Comprehensive Plan discusses a continuing commitment to neighborhoods:

Neighborhoods are one of Lincoln's great strengths and their conservation is fundamental to this plan. The health of Lincoln's varied neighborhoods and districts depends on implementing appropriate and individualized policies. In addition, the land use plan is the basis for zoning and other land development decisions. It should guide decisions that will maintain the quality and character of the community's established neighborhoods. (p 36a)

UTILITIES: None

TOPOGRAPHY: Flat

TRAFFIC ANALYSIS: Yankee Hill Road is a gravel county road. 70th Street is a paved County Road

PUBLIC SERVICE: County sheriff and SE rural fire.

ANALYSIS:

1. This is an application for special permit for temporary storage of construction equipment and materials.
2. The Zoning Ordinance states:

27.63.590 Permitted Special Use: Temporary Storage of Construction Equipment and Materials.

Temporary storage of construction equipment and materials may be allowed by special permit in the AG zoning district under the following conditions

(a) The site shall be located in or within one mile of the future urban area as designated in the Comprehensive Plan.

This is one quarter mile from the Future Service Limit.

(b) Such use shall comply with the height, and area regulations of the AG district; except that the City Council may reduce the minimum lot area to seven acres.

This is on a 20 acre lot which conforms with the AG district minimum lot size.

(c) The combined area of indoor and outdoor storage on the site shall not exceed two acres and such area shall be fenced.

The defined area of the special permit is two acres. Some of the area is fenced by a 10' wood privacy fence, chain link fencing and three wire fencing.

(d) The building and outdoor storage area shall be screened in accordance with city design standards.

A portion of the area is screened from Yankee Hill road by a 10' wood board fence.

(e) Such use shall be permitted for a limited period of time not to exceed fifteen years which shall be determined by the City Council with reference to the anticipated urbanization of the surrounding area in accordance with the Comprehensive Plan and the Capitol Improvements Plan. The permittee may request one administrative amendment for an extension of the use up to five years. (Ord. 17801 §1; March 5, 2001; prior Ord. 15133 §2; March 27, 1989).

3. The applicant states the hours of operation will be Monday through Friday, 8:00 a.m. to 5:00 p.m.. Employees will be working on weekends but it will be closed to the public. Trucks and employees vehicles will not be coming or going except for normal business hours.

4. Parking is not delineated. The applicant states that all parking is behind the screen fence and very few customers come to this facility. Eight cars were parked south of the screening fence at the date of the site visit on March 11, 2002.
5. The applicant states that material will be moved to the east side of the building and a fence constructed. Trucks will also be parked at this location. There are currently five full time and two part time employees.
6. Health Department notes that the fuel tanks need to be removed or methods provided for secondary containment. An abandoned fuel tank on the site must be properly disposed of.
7. The Public Works Department requests that the parking be addressed and shown on the site plan. Design Standards will require paving for a parking lot of six or more vehicles.
8. Building and Safety notes;
 - We have a pending complaint on this site.
 - Contractors offices and storage yards, are currently permitted uses within various commercial and industrial zoning districts but not the AG Agriculture zoning district.
 - The actual operation of the activity is more accurately defined as a place of business of a contractor rather than simply storage of construction equipment and materials.
 - We have no permit records for this property.
 - The use of cheaper rural lands punishes and disadvantages those contractors who locate in accordance with the zoning code and build in accordance with the building and life safety codes at a higher cost.
 - The zoning ordinance is structured to minimize conflicts. Approval of this special permit, and subsequent requests, will aggravate such conflicts between land uses.
 - This department continues to receive complaints about the use of property in the AG Agriculture for commercial business operations. The approval of this special permit will encourage many similar uses.
 - We would recommend this special permit not be approved.

9. This proposal includes storage of material and equipment, retail sales for customers, an office, product fabrication and finishing. The Letterhead of the applicant indicates that 7301 Yankee Hill Road is the location of Custom Fence Company.
10. This appears to be a full service business location versus a “temporary storage of construction equipment and materials” as allowed by the special permit.
11. The issue of “temporary” as provided by the special permit is not addressed.
12. Contractors yards are permitted in the B-4, H-3, H-4, I-1 and I-2 districts.
13. Allowing contractors yards and businesses in the Agriculture District would be a substantial inequity to those businesses in the appropriate business and commercial zones, as well as an encouragement for a proliferation of a variety of this type of use in the Agriculture District.
14. The unanimous denial on August 20, 2001 of Special Permit # 1909 (plumbers storage under this provision) by the City Council indicates this is not the intended use of this provision.
15. The Law Department indicates the special permit should apply to the entire parcel in order to insure compliance with the code.
16. Do to its potential for misuse and unclear interpretation, Section 27.63.590 should be repealed.

If, after holding public hearing, the Planning Commission decides to grant this special permit, the following conditions should apply.

CONDITIONS:

Site Specific:

1. This approval permits the temporary storage of construction equipment and materials only, for a period of three years. No retail, fabrication or office functions shall be allowed.

General:

2. Before receiving building/occupancy permits:

- 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.
 - 2.1.1 A revised site plan including 5 copies showing the following revisions:
 - 2.1.1.1 Provide a paved and marked parking lot layout to the satisfaction of the Public Works Department.
 - 2.1.1.2 Provide a screening plan of the building and storage areas as required by the design standards.
 - 2.1.1.3 Show the boundaries of the special permit as all of Lot 32 I.T.
 - 2.1.1.4 Add a note that the premise shall be used only for storage of construction equipment and materials.
 - 2.1.1.5 Provide information satisfactory to the Lincoln-Lancaster County Health Department.
- 2.2 All non-associated vehicles and vehicle storage on Lots 32 and 33 shall be removed.
- 2.3 The construction plans shall comply with the approved plans.
- 2.4 This use shall cease 3 years following the approval of this special permit unless the Director of Planning approves an administrative amendment for its extension.

STANDARD CONDITIONS:

- 3. The following conditions are applicable to all requests:
 - 3.1 Before commencing operations of this temporary storage facility, all development and construction is to comply with the approved plans.
 - 3.2 Before commencing operations, City/County Health Department is to approve the water and waste water systems.
 - 3.3 All privately-owned improvements, including landscaping and screening, are to be permanently maintained.

- 3.4 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
- 3.5 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 3.6 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by

Michael DeKalb
Planner

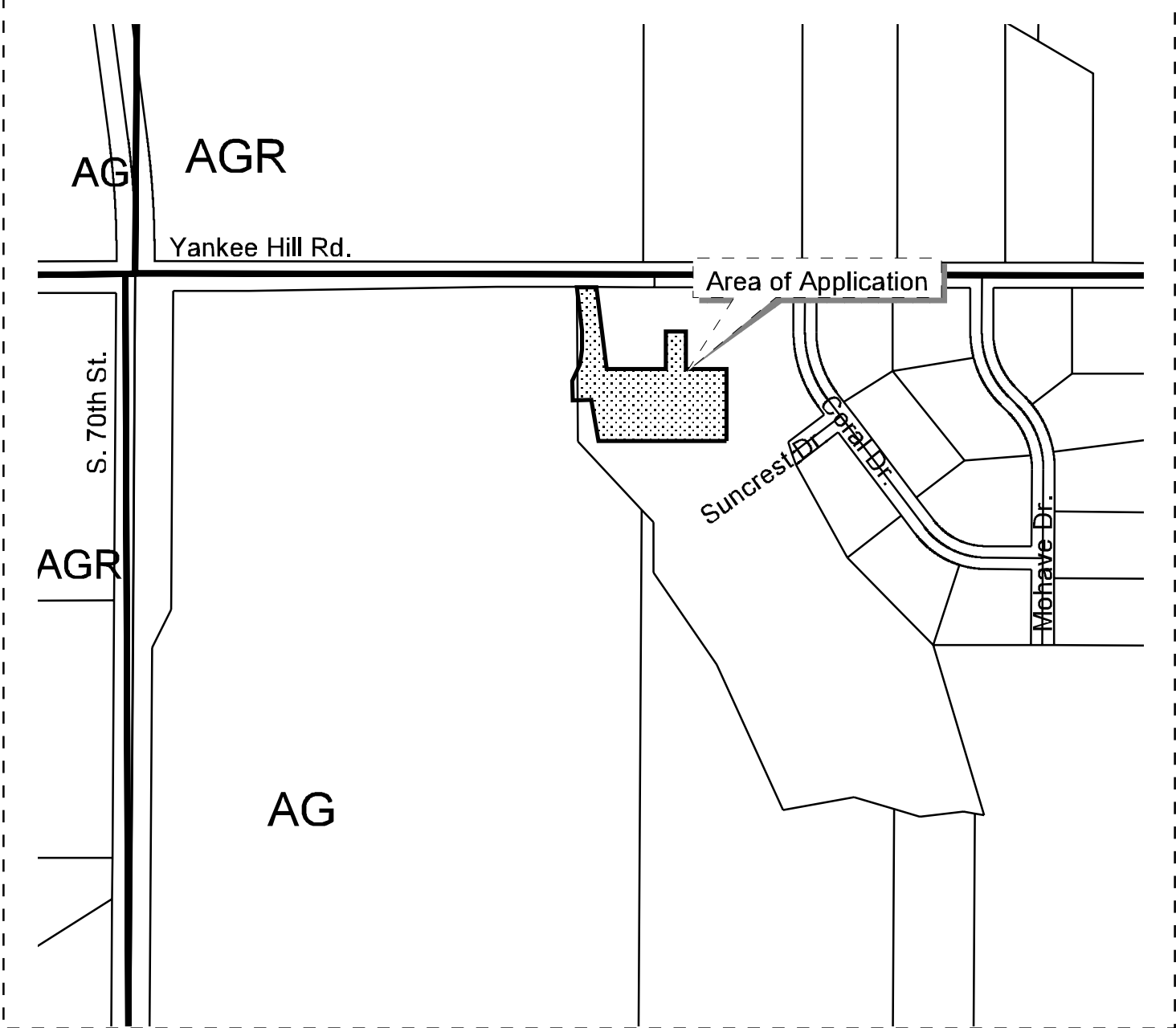
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**Special Permit #1961
Yankee Hill Rd. & Coral Dr.
Custom Fence Co.**



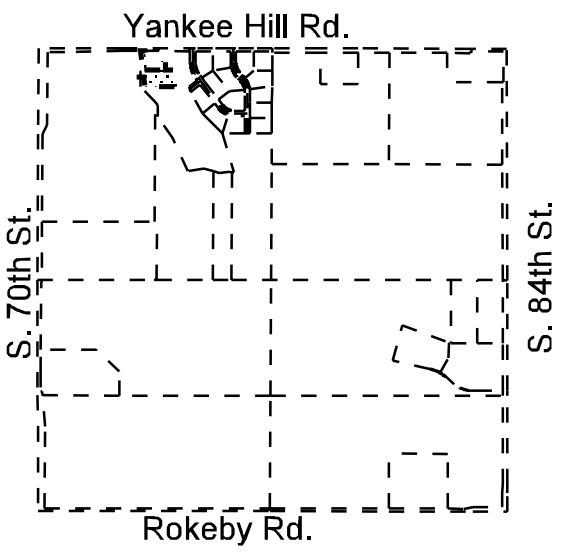
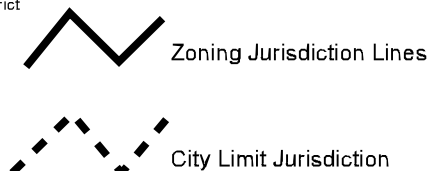
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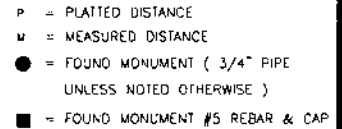
Special Permit #1961
Yankee Hill Rd. & Coral Dr.
Custom Fence Co.

- Zoning:**
- R-1 to R-8 Residential District
 - AG Agricultural District
 - AGR Agricultural Residential District
 - R-C Residential Conservation District
 - O-1 Office District
 - O-2 Suburban Office District
 - O-3 Office Park District
 - R-T Residential Transition District
 - B-1 Local Business District
 - B-2 Planned Neighborhood Business District
 - B-3 Commercial District
 - B-4 Lincoln Center Business District
 - B-5 Planned Regional Business District
 - H-1 Interstate Commercial District
 - H-2 Highway Business District
 - H-3 Highway Commercial District
 - H-4 General Commercial District
 - I-1 Industrial District
 - I-2 Industrial Park District
 - I-3 Employment Center District
 - P Public Use District

One Square Mile
 Sec. 27 T9N R7E



LOT 32 IRREGULAR TRACT
NW 1/4, SECTION 27, T 9 N, R 7 E
LANCASTER COUNTY, NEBRASKA



SPECIAL USE AREA

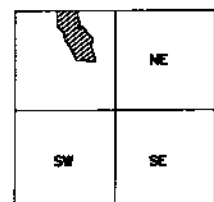
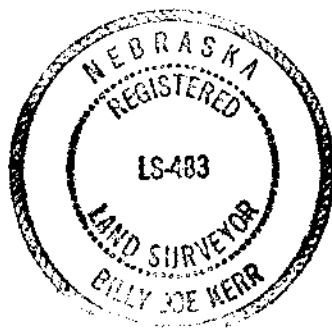
PART OF LOTS 32 AND 33 IRREGULAR TRACTS, LOCATED IN THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6th P.M., LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 32; THENCE ON THE NORTH LINE OF SAID LOT 32, ON AN ASSIGNED BEARING OF N 90°00'00"E A DISTANCE OF 51.00'; THENCE S 7°09'13"E 216.67'; THENCE N 90°00'00"E 155.87'; THENCE N 0°00'00"E 98.00'; THENCE N 90°00'00"E 52.00'; THENCE S 0°00'00"W 98.00'; THENCE N 90°00'00"E 106.74'; THENCE S 0°00'00"W 189.81'; THENCE S 90°00'00"W 335.44', TO A POINT ON THE WESTERLY LINE OF SAID LOT 32; THENCE ON SAID WESTERLY LINE OF SAID LOT 32, FOR THE NEXT SEVEN COURSES, N 10°09'07"W 110.23'; THENCE S 88°04'56"W 48.70'; THENCE N 1°34'37"W 52.00'; THENCE N 25°54'05"E 47.46'; THENCE N 8°20'05"E 38.95'; THENCE N 0°06'49"W 50.23'; THENCE N 6°54'4"W 115.32', TO THE POINT OF BEGINNING, SAID TRACT CONTAINING AN AREA OF 2.00 ACRES, MORE OR LESS.

I, THE UNDERSIGNED, A DULY REGISTERED LAND SURVEYOR IN AND FOR THE STATE OF NEBRASKA, DO HEREBY CERTIFY THAT THE SAID SURVEY TO BE MADE OF THE FOREGOING DESCRIBED PROPERTY, AND THAT THE RESULTS OF SAID SURVEY ARE TRULY AND ACCURATELY DEPICTED HEREON, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

IN TESTIMONY WHEREOF WITNESS MY HAND AND SEAL THIS 23rd DAY OF JANUARY, 2002.

Billy Joe Kear
BILLY JOE KEAR, LS 1483



K & M INC.
LAND SURVEYING

540 W. INDUSTRIAL LAKE DR. #1
LINCOLN, NE 68528
(402) 478-3020
(402) 478-3138 FAX

#6 ROD

M=131.15'
N 0°15'54"E

M=294.03'
N 34°34'56"W

LEGAL DESCRIPTION

SPECIAL USE AREA


PART OF LOTS 32 AND 33 IRREGULAR TRACTS, LOCATED IN THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6th P.M., LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 32; THENCE ON THE NORTH LINE OF SAID LOT 32, ON AN ASSIGNED BEARING OF N 90°00'00"E A DISTANCE OF 51.00'; THENCE S 7°09'13"E 216.67'; THENCE N 90°00'00"E 155.87'; THENCE N 0°00'00"E 98.00'; THENCE N 90°00'00"E 52.00'; THENCE S 0°00'00"W 98.00'; THENCE N 90°00'00"E 106.74'; THENCE S 0°00'00"W 189.81'; THENCE S 90°00'00"W 335.44', TO A POINT ON THE WESTERLY LINE OF SAID LOT 32; THENCE ON SAID WESTERLY LINE OF SAID LOT 32, FOR THE NEXT SEVEN COURSES, N 10°09'07"W 110.23'; THENCE S 88°04'56"W 48.70'; THENCE N 1°34'37"W 52.00'; THENCE N 25°54'05"E 47.46'; THENCE N 8°20'05"E 38.95'; THENCE N 0°06'49"W 50.23'; THENCE N 6°5'04"W 115.32', TO THE POINT OF BEGINNING, SAID TRACT CONTAINING AN AREA OF 2.00 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, THE UNDERSIGNED, A DULY REGISTERED LAND SURVEYOR IN AND FOR THE STATE OF NEBRASKA, DO HEREBY CERTIFY THAT I CAUSED A SURVEY TO BE MADE OF THE FORGOING DESCRIBED PROPERTY, AND THAT THE RESULTS OF SAID SURVEY ARE TRULY AND ACCURATELY DEPICTED HEREON, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

IN TESTIMONY WHEREOF WITNESS MY HAND AND SEAL THIS 23rd DAY OF JANUARY, 2002.


BILLY JOE KERR, LS 1483





7301 Yankee Hill Rd. Lincoln, NE 68516
423-5253

February 27, 2002

Mr. Mel Goddard
Department of Building and Safety
555 South 10th Street, Room 203
Lincoln, NE 68508

Dear Mr. Goddard;

This letter is in response to your letter dated January 18, 2002, regarding zoning for the property at 7333 Yankee Hill Road. We are submitting with this letter an application for a Special Permit/Change of Zone, Layout and Site plan of the property, and various information which Mike DeKalb has requested.

Mike DeKalb has requested that our customer, employee and equipment parking areas be defined. We also have identified items which need to be completed in order to comply with City Codes such as fencing or screening for storage and equipment parking. We also understand that our building needs to comply with commercial building codes.

Hours of Operation

- The hours of operation for our facility are Monday through Friday 8:00 a.m. to 5:00 p.m. Employees may be on-site additional time to load/unload equipment & materials and complete various end of the day duties.
- There may be times that employees will be working on weekends to finish projects or make up time missed during the week. At these times we are not open to the public.

Parking:

- Currently there is 10 foot tall wood fence with steel posts which extends out from the Northwest corner of the building West to the entrance drive. The employees are instructed to park along the Southside of the fence.
- As for customer parking, we have very few customers coming out to our facility. The parking available for customers shall be on the concrete drive in front of the building which is located on the West side of the building.
- No employee or customer parking areas are visible from any public property or roads.

Materials Storage and Equipment Parking

- Materials such as Chain Link fabric and pipe, bundles of wood and Chain Link and Wood posts shall be moved to the East side of the building. Currently the pad site on the East side of the building is not fenced, however, we plan to install a wood privacy or chain link fence to enclose this area for material storage.
- Once the pad site is enclosed we will also park our trucks and equipment in this location.
- There will also be times depending on the weather that equipment may be parked inside the building.
- We intend to keep the building and the surrounding area orderly and free from piling debris. Our equipment and trucks have and shall continue not to be a noise or traffic problem.
- Trucks and employees vehicles will not be coming and going from this location except during normal business hours.

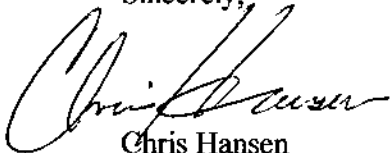
Employees

- We currently employ five full-time employees and two part-time employees.
- My wife and I are the only office staff at the current time.

I trust that the information provided will be sufficient to obtain a Special Permit or proper re-zoning for the property at 7333 Yankoc Hill Road. We would like to continue operation of our business at this location.

Please let me know how I can be of any assistance to you and the Department of Building and Safety.

Sincerely,



Chris Hansen
President and Owner
Custom Fence Company

encl:

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Mike DeKalb

DATE: 3/11/2002

DEPARTMENT: Planning

FROM: Chris Schroeder
Richard Slama

ATTENTION:

DEPARTMENT: Health

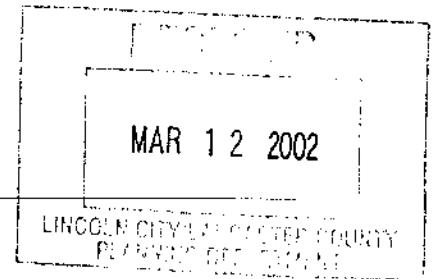
CARBONS TO: Bruce Dart, Director
EH File
EH Administration

SUBJECT: Custom Fence Co.
SP #1961

The Lincoln-Lancaster County Health Department (LLCHD) has reviewed the requested special permit and conducted an on-site assessment of the property. The following items are noted:

- Currently, there are two above ground fueling tanks, one designated for gasoline and one for diesel fuel. Secondary containment does not exist for these tanks. The LLCHD has concerns regarding environmental contamination that could occur from accidents, vandalism, spills, etc. from these tanks. In addition, a drainage way is located approximately 100 yards east from these tanks. Therefore, LLCHD requests that the tanks are removed or a letter stating what methods will be utilized for secondary containment. Secondary containment should be installed with a capacity to contain the combined volume of both tanks.
- An abandoned tank is located on approximately the southeast corner of the proposed special permit area. The LLCHD recommends the removal and proper disposal of this tank.

M e m o r a n d u m



To: Mike DeKalb, Planning Department

From: Charles W. Baker, Public Works and Utilities *BWB*

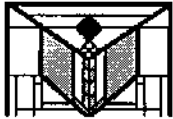
Subject: Custom Fence Company, Special Permit #1961

Date: March 11, 2002

cc: Roger Figard
Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request for Special Permit #1961, Custom Fence Company located east of 70th on Yankee Hill Road. Public Works has the following comments:

- Public Works has no objection to the temporary storage of equipment and materials under Chapter 27.07.040 Lincoln Municipal Code. The conditions of Chapter 27.63.590 have also been met for the Special Permit.
- Chapter 27.63.010 states that a plot plan drawn to an accurate scale be provided that shows all pertinent information. The required parking has not been addressed. The applicant's letter states that 5 full time employees along with 2 part time and 2 office staff with some customer parking will be required on this site. Public Works requests that the parking on this site be addressed and shown on the site plan. Design Standards require that parking for six or more vehicles be provided on an approved hard surface lot with hard surfaced access.



Rodger P Harris

03/12/2002 03:53 PM

To: Michael V Dekalb/Notes@Notes
cc: Michael Merwick/Notes@Notes, Chuck A
Zimmerman/Notes@Notes, Mel E Goddard/Notes@Notes
Subject: SP 1961, 7301 Yankee Hill Rd., Custom Fence Co.

We have reviewed the above referenced special permit and have the following comments to offer:

We have a pending complaint on this site concerning use of the property for commercial business purposes. This application requests a special permit under Section 27.63.590 LMC for the Temporary Storage of Construction Equipment and Materials.

Contractors offices and storage yards, are currently permitted uses within various commercial and industrial zoning districts. The AG Agriculture zoning district does not allow as permitted or permitted conditional uses, contractors offices and storage yards, (or other) contractors places of business, only temporary storage of construction equipment and materials, by special permit. A question exists as to whether the actual operation of the activity, open to the public with customers coming to the facility, even if few in number, and use of employees at the subject site is related to the business of a fence contractor or the storage of construction equipment and materials. The activity of employees, who would daily report to the subject site, pick up equipment and materials to be transported to a job site, and return at the end of work, is more accurately defined as a place of business of a contractor rather than simply storage of construction equipment and materials.

The proposed special permit area includes a 2 acre site which does not conform to Section 27.63.590(b) LMC which requires conformance with the height and area regulations of the AG district; except that the City Council may reduce the minimum lot area to seven acres.

We have no permit records for this property to show when, and for what purpose, various improvements were constructed. The site contains an area of 20 acres or more and may have been constructed without building permits per the farmstead exception in Section 18.04.010 Lincoln Municipal Code. Many large buildings exist in the city zoning 3 mile jurisdiction area originally constructed with building permits as agriculture buildings under the building code. Some buildings have been and continue to be constructed on farmsteads, (over 20 acres in area) without building permits, and are constructed to undetermined standards. This and future requests may also propose the use of existing buildings for nonagricultural uses, which were originally constructed as agriculture buildings.

The use of cheaper rural lands and buildings not constructed to commercial standards, for places of business commercial contractors, in effect punishes and disadvantages those contractors who locate in accordance with the zoning code and build in accordance with the building and life safety codes at a higher cost.

The zoning ordinance is structured to minimize conflicts between land uses. Approval of this special permit, and subsequent requests, will aggravate such conflicts. This is demonstrated by the fact that this department continues to receive complaints about the use of property in the AG Agriculture for what is in effect commercial business operations. The approval of this special permit will encourage many similar uses with subsequent ratification of the use requested by special permit.

We would recommend this special permit not be approved.